

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

January 4, 2001

IN RE:

ALL TELEPHONE COMPANIES TARIFF  
FILINGS REGARDING RECLASSIFICATION  
OF PAY TELEPHONE SERVICE AS REQUIRED  
BY FEDERAL COMMUNICATIONS COMMISSION  
(FCC) DOCKET 96-128

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) DOCKET NO.  
) 97-00409  
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ORDER AFFIRMING PRE-HEARING OFFICER'S ORDERS  
OF JULY 21, 2000 AND JULY 31, 2000

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This matter came before the Tennessee Regulatory Authority ("Authority") at the regularly scheduled Authority Conferences held on August 1, 2000 and August 15, 2000 upon the *Appeal of Pre-Hearing Officer's Order Denying TPOA's Motion for Interim Relief* ("Appeal") and the *Objection of Tennessee Payphone Owners Association of the Hearing Officer's Order of July 31, 2000* ("Objection") filed by the Tennessee Payphone Owners Association ("TPOA").<sup>1</sup>

**Factual and Procedural History**

Pursuant to Section 276 of the Federal Telecommunications Act of 1996 ("Act"), the Federal Communications Commission ("FCC") issued a series of orders mandating that state commissions enforce the FCC's newly promulgated rules, which required telephone companies to file tariffs with state commissions reclassifying payphones and removing subsidies

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<sup>1</sup> During the August 1, 2000 Authority Conference, the Directors addressed the procedural schedule set forth in the July 21, 2000 Order. At the Conference on August 15, 2000, the Directors took up all remaining issues from the Appeal and the Objection.

to payphone operations from other classes of services.<sup>2</sup> As a result, on February 28, 1997, BellSouth Telecommunications, Inc. ("BellSouth") filed a tariff in Docket No. 97-00346,<sup>3</sup> and on January 10, 1997, United Telephone Southeast, Inc. ("UTSE") filed two tariffs in Docket Nos. 97-00345 and 97-00344.<sup>4</sup> The tariffs each contained an effective date of April 1, 1997.<sup>5</sup> The TPOA filed a petition to intervene in each of the dockets on March 14, 1997, and AT&T Communications of the South Central States, Inc. ("AT&T") filed a petition to intervene in each of the dockets on April 2, 1997.

Claiborne Telephone Co., Ooltewah/Collegedale Telephone Co., Ardmore Telephone Co., Adamsville Telephone Co., Millington Telephone Co., Peoples Telephone Co., West Tennessee Telephone Co., United Telephone Co., Crocket Telephone Co., Citizens Telecommunications Company of Tennessee and Citizens Telecommunications Company of the Volunteer State (collectively "Citizens"), Loretto Telephone Co., and the Telephone Data System Companies ("TDS"), which include Tennessee Telephone Co., Humphreys County Telephone Co., Concord Telephone Exchange, Inc., and Tellico Telephone Co., each filed tariffs and revised tariffs in January, February, and March 1997. All the tariffs contained an effective date of April 15, 1997.

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<sup>2</sup> See *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC Docket No. 96-388, 11 FCC Rcd 20,541 (Sept. 20, 1996) (Report and Order); *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, FCC Docket No. 96-439, 11 FCC Rcd 21,233 (Nov. 8, 1996) (Order on Reconsideration).

<sup>3</sup> See *Tariff Filing by BellSouth Telecommunications to Comply with FCC Order 96-439, Concerning the Reclassification of Pay Telephones (Tariff 97-067)*, TRA Docket No. 97-00346.

<sup>4</sup> See *Tariff Filing by United Telephone Southeast to Comply with the FCC Order 96-439, Concerning the Reclassification of Pay Telephones (Tariff 97-010)*, TRA Docket No. 97-00345; *Tariff Filing by United Telephone Southeast to Revise General Subscribers Tariff to Comply With the FCC Order 96-439, Concerning the Reclassification of Pay Telephones (Tariff 97-007)*, TRA Docket No. 97-00344.

<sup>5</sup> UTSE later filed an amended tariff with an effective date of May 19, 1997.

The Authority considered the tariffs in Docket Nos. 97-00344, 97-00345, and 97-00346 and the TPOA's petitions to intervene at a regularly scheduled Authority Conference on March 18, 1997. Thereafter, the Authority entered an order on April 4, 1997 in Docket Nos. 97-00344 and 97-00345 and on April 7, 1997 in Docket No. 97-00346 granting the TPOA's petitions to intervene, approving the respective tariffs pending the outcome of a contested case, and opening a consolidated docket to proceed with the contested case. The number assigned to the consolidated docket was 97-00409.

By letter of April 9, 1997, AT&T requested that the Authority consider AT&T's petitions to intervene filed in Docket Nos. 97-00344, 97-00345, and 97-00346 as filed in the new, consolidated docket. The Consumer Advocate Division of the Office of the Attorney General and Reporter ("Consumer Advocate") filed a *Petition to Intervene* on April 14, 1997.<sup>6</sup>

At a regularly scheduled Authority Conference held on April 15, 1997, the Authority appointed Director H. Lynn Greer, Jr. as the Pre-Hearing Officer in Docket No. 97-00409. The Authority granted AT&T's and the Consumer Advocate's petitions to intervene, ordered TDS to reduce its rates and eliminate the subsidy to pay telephones from regulated services revenues, and approved the tariffs of TDS, Loretto Telephone Co., Citizens, Peoples Telephone Co., West Tennessee Telephone Co., United Telephone Co., Crocket Telephone Co., Claiborne Telephone Co., Ooltewah/Collegedale Telephone Co., Ardmore Telephone Co., Adamsville Telephone Co., and Millington Telephone Co.<sup>7</sup>

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<sup>6</sup> This division is now known as the Consumer Advocate and Protection Division of the Office of the Attorney General and Reporter.

<sup>7</sup> The Authority entered written orders on April 24, 1997 and May 2, 1997 memorializing the rulings rendered during the April 15, 1997 Authority Conference. The April 24, 1997 Order granted AT&T's petition to intervene. The May 2, 1997 Order appointed Director H. Lynn Greer, Jr. as the Pre-Hearing Officer, granted the Consumer Advocate's petition to intervene, approved the tariffs, and ordered TDS to reduce the rates and eliminate the subsidy to pay telephones from regulated services revenues.

On April 22, 1997, MCI Telecommunications Corporation (“MCI”) filed a petition to intervene. At the regularly scheduled Authority Conference held on April 29, 1997, the Authority unanimously voted to grant the petition and entered a written order granting the petition on May 12, 1997.

At a Pre-Hearing Conference held on May 29, 1997, the Consumer Advocate requested that the Authority bifurcate Docket No. 97-00409 to include BellSouth, UTSE, and Citizens and then open another docket to include the remaining, smaller, independent local exchange carriers (“independent LECs”). The Pre-Hearing Officer ordered the bifurcation because the expense of preparing cost studies for this docket would be too great for the independent LECs. In addition, the Pre-Hearing Officer obtained the parties’ agreement to a procedural schedule. The Pre-Hearing Officer memorialized this decision and the schedule in the *Preliminary Report and Recommendation of the Hearing Officer* entered on May 29, 1997 and in the *Order Establishing a Separate Docket for the Smaller Companies* entered on June 6, 1997.<sup>8</sup>

On June 26, 1997, the TPOA filed *TPOA Request for Continuance*. The TPOA requested that the Pre-Hearing Officer continue the procedural schedule for approximately thirty (30) days to allow the TPOA to consult with expert witnesses and prepare for the hearing. On July 8, 1997, the Pre-Hearing Officer held a Pre-Hearing Conference to address several issues including the *TPOA Request for Continuance*. During the conference, the Pre-Hearing Officer granted the TPOA’s request and scheduled a status conference for September 3, 1997 to finalize the issues list and amend the procedural schedule. The Pre-Hearing Officer recounted these rulings in the *Second Report and Recommendation of the Hearing Officer* entered on July 15, 1997.

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<sup>8</sup> The contested case involving the independent LECs was assigned Docket No. 97-01181.

On September 3, 1997, the Pre-Hearing Officer conducted the previously scheduled status conference. During the conference, the parties determined that the issues included: 1) the calculation of subsidies to or from payphone operations; 2) the rate changes to remove any determined subsidies; and 3) an access line rate for payphones. Also during the conference, the Consumer Advocate requested a delay in the procedural schedule until after the completion of Docket No. 97-00888, the Universal Services docket. The TPOA and UTSE favored the requested delay. MCI expressed no preference, and BellSouth opposed the delay. The Pre-Hearing Officer agreed to the requested delay<sup>9</sup> and determined that another status conference was necessary to establish a new procedural schedule. The Pre-Hearing Officer entered the *Third Report and Recommendation of the Hearing Officer* reflecting this decision on September 16, 1997, which the Authority adopted at the October 7, 1997 Authority Conference.

At a second status conference held on September 23, 1997, the parties stated that they had not settled any of the issues and agreed to a new procedural schedule. The Pre-Hearing Officer entered the *Fourth Report and Recommendation of the Hearing Officer* on September 24, 1997 memorializing the September 23rd rulings, which the Authority adopted at the October 7, 1997 Authority Conference.

On March 4, 1998, the TPOA filed an *Agreed Motion for Continuance* on behalf of all the parties. This motion stated that the Authority should continue the docket until it completes the Permanent Prices docket and the Universal Services docket, Docket Nos. 97-01262 and 97-00888 respectively, because both dockets involve the determination of the costs of various BellSouth services, including the costs of facilities used to serve pay telephones. In addition, the motion stated that the parties had agreed to the postponement because, as required by the FCC,

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<sup>9</sup> During the September 23, 1997 status conference, the Pre-Hearing Officer restated this ruling in order to avoid any confusion. See *Transcript of Pre-Hearing Conference*, p. 3-4 September 23, 1997.

the final rates would be applied retroactively to April 15, 1997. The Pre-Hearing Officer agreed to the motion and granted the continuance in the *Initial Order for Extension of Time* filed on March 27, 1998.

Docket No. 97-00409 remained inactive until March 21, 2000, when the TPOA filed a letter requesting that the Pre-Hearing Officer reconvene the proceeding and set a procedural schedule. The TPOA argued that the docket should be reconvened because the Permanent Prices docket appears to be reaching a conclusion, the FCC released a decision providing further guidelines for the determination of payphone rates,<sup>10</sup> and the members of the TPOA are in need of relief. BellSouth filed a responsive letter on March 31, 2000. Although BellSouth agreed that the Pre-Hearing Officer should reconvene the proceedings, it did not agree with the TPOA's characterization of the FCC's recent decision. UTSE and Citizens filed a letter on May 12, 2000 wherein the parties argued that the request to reconvene the docket is premature because the Authority has not issued final orders in either the Permanent Prices docket or the Universal Services docket.

On June 22, 2000, the TPOA filed a *Motion for Interim Relief*. In its motion, the TPOA stated that its members who operate pay telephones in the BellSouth region pay average rates of \$40.00 per line<sup>11</sup> and that its members need immediate relief if they are to continue providing service. As evidence, the TPOA attached affidavits from pay telephone operators who claimed to have suffered severe economic harm as a result of the continuation of the docket.

The Consumer Advocate, UTSE, and BellSouth filed comments to the *Motion for Interim Relief* on June 30, 2000. The Consumer Advocate supported a swift resolution of the pay

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<sup>10</sup> *In the Matter of Wisconsin Pub. Serv. Comm'n*, CCB/CPD No. 00-1, 2000 WL 232182 (March 2, 2000) (Order Directing Filings).

<sup>11</sup> Although the parties routinely refer to the "\$40.00 interim rate," the actual interim rate is the tariffed rate for business measured service. According to the TPOA, the total charges are approximately \$40.00 per month.

telephone proceeding and interim relief for independent pay telephone providers. In its response, UTSE stated that the TPOA's reasons for relief contain assertions that could impact UTSE if such assertions are accepted as true and applied to UTSE as well as BellSouth. UTSE noted the dramatic increase in independent pay telephone providers, despite the purported exorbitant rate. UTSE also asserted that the pay telephone providers' revenue decreases and other alleged economic harm stem from increased competition; increases in costs, other than those in dispute; and their failure to collect dial around compensation from inter-exchange carriers. BellSouth reiterated UTSE's arguments regarding the claims of independent pay telephone providers. In addition, BellSouth objected to the adoption of a revised interim rate without the benefit of testimony, cross-examination, or cost studies.

The TPOA filed its reply on July 7, 2000. The TPOA reiterated its position that BellSouth's pay telephone rates are excessive and argued that a small reduction in the monthly charge would keep more pay telephones in operation. The TPOA also argued that BellSouth failed to provide a legal justification for its contention that an evidentiary hearing is required for the setting of interim rates.

On July 21, 2000, the Pre-Hearing Officer filed an Order, which reconvened Docket No. 97-00409 and directed the parties in Docket Nos. 97-00409 and 97-01181 to file comments on three options concerning how to proceed with the two dockets. The three options presented called for either: combining the dockets, maintaining separate proceedings, or maintaining separate proceedings with the Docket No. 97-01181 parties intervening in Docket No. 97-00409 for the limited purpose of commenting on the proposed rates. The Pre-Hearing Officer also denied the TPOA's *Motion for Interim Relief* and set out a swift and efficient procedural schedule to which the parties had agreed.

In the July 21, 2000 Order, the Pre-Hearing Officer focused on the \$18.90 rate proposed by the TPOA to be the revised interim rate. The Pre-Hearing Officer acknowledged that the parties did not agree to the TPOA's \$18.90 rate. The Pre-Hearing Officer then found that the \$18.90 rate was not based on an evidentiary record and stated that there were disputed issues related to the method used to calculate that rate. Under these circumstances, the Pre-Hearing Officer decided not to adopt the \$18.90 rate absent the development of an evidentiary record or agreement of the parties. Nonetheless, the Pre-Hearing Officer determined that any further delay in setting permanent rates harms competition in the pay telephone market. On July 26, 2000, the TPOA filed an Appeal of the Order. The TPOA argued that the Pre-Hearing Officer's reasons underlying the decision to deny the TPOA's *Motion for Interim Relief* are unsound and inconsistent with the Authority's rulings in other cases.

Concurrently, the parties filed comments on the three options proffered by the Pre-Hearing Officer concerning how to proceed with Docket Nos. 97-00409 and 97-01181. The TPOA filed its comments on July 21, 2000 and argued that TDS should be a party to 97-00409, not 97-01181. TDS and the other independent LECs also filed comments on July 21, 2000. These companies argued in favor of the third option, maintaining separate dockets with the Docket No. 97-01181 parties intervening in Docket No. 97-00409 for the limited purpose of commenting on the proposed rates. Citizens opted for combining the dockets.

After considering the comments and arguments of the parties, the Pre-Hearing Officer filed an Order on July 31, 2000, which found that none of the parties had provided a compelling reason to overturn the June 6, 1997 Order separating the dockets. The Pre-Hearing Officer further concluded that the parties to Docket No. 97-01181 should be spared the expense associated with filing cost studies in Docket No. 97-00409.



At the August 1, 2000 Authority Conference, the Directors addressed only the procedural schedule set forth in the July 21<sup>st</sup> Order. Thereafter, a discussion ensued related to the Appeal and subsequent filings directed at the July 31<sup>st</sup> Order. Director Greer, as the Pre-Hearing Officer, asked BellSouth to file its response to the Appeal on August 9, 2000, and the other parties to file any objections to the July 31<sup>st</sup> Order by August 9, 2000.

As a result of the Pre-Hearing Officer's directions, the parties filed numerous documents from August 3, 2000 through August 11, 2000. On August 3, 2000, the TPOA filed its Objection. In its Objection, the TPOA disagreed with the Pre-Hearing Officer's decision to classify "TDS Telecom among the state's 'small' local exchange carriers, rather than with the larger carrier[s] for the purpose of establishing cost-based payphone rates." TDS filed a response to the Objection on August 10, 2000. Citizens and BellSouth filed their responses to the Appeal on August 9, 2000, and UTSE filed a letter advocating denial of the Appeal on August 11, 2000. The TPOA replied to BellSouth's response on August 11, 2000.

### **Findings and Conclusions**

Based upon a review of the July 21<sup>st</sup> Order, the July 31<sup>st</sup> Order, and all related filings, the Directors find and conclude as follows:

1) The parties agreed to the procedural schedule set forth in the July 21, 2000 Order at the July 11, 2000 Pre-Hearing Conference and presented no objections to that schedule during the August 1, 2000 Authority Conference.

2) Based upon the parties' compliance with the procedural schedule, the most efficient manner in which to proceed is to set permanent rates as soon as practicable. Any harm that may flow from maintaining the existing interim rate is minimized by the fact that permanent rates will be set quickly followed by a true-up.

3) If the parties are not able to comply with the procedural schedule, the need may arise to readdress the issue of interim rates. Given this, the TPOA should be permitted to renew its *Motion for Interim Relief* if a breakdown in the procedural schedule occurs.

4) During the May 29, 1997 Pre-Hearing Conference, the Pre-Hearing Officer provided the opportunity for the parties to determine which parties should participate in Docket Nos. 97-00409 and 97-01181. At that time, it was determined that TDS would be a party to Docket No. 97-01181. Not only were there no objections to this determination, but the TPOA specifically stated that the decision should be left to TDS.<sup>12</sup>

**IT IS THEREFORE ORDERED THAT:**

1) The July 21, 2000 Order of the Pre-Hearing Officer, attached to this Order as Exhibit 1, is adopted and incorporated in this Order as if fully set out herein. The Tennessee Payphone Owners Association may renew its *Motion for Interim Relief* if it becomes apparent that the case can no longer proceed according to the adopted procedural schedule.

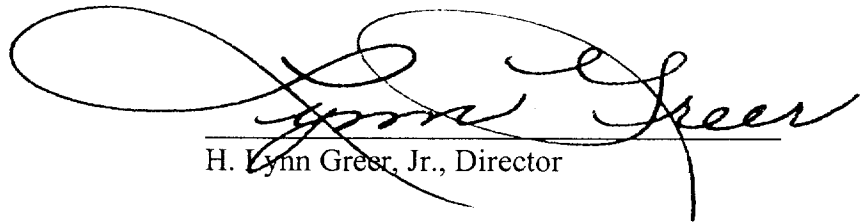
2) The July 31, 2000 Order of the Pre-Hearing Officer, attached to this Order as Exhibit 2, is adopted and incorporated in this Order as if fully set out herein.

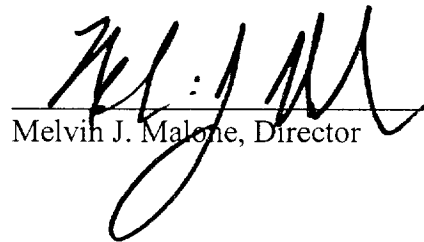
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<sup>12</sup> See *Transcript of Pre-Hearing Conference*, p. 31 (May 29, 1997).

3) Any party aggrieved by this Order may file a Petition for Reconsideration with the Tennessee Regulatory Authority pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of this Order.

  
Sara Kyle, Chairman

  
H. Lynn Greer, Jr., Director

  
Melvin J. Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary

## BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 21, 2000

IN RE:

ALL TELEPHONE COMPANIES TARIFF )  
FILINGS REGARDING RECLASSIFICATION )  
OF PAY TELEPHONE SERVICE AS REQUIRED )  
BY FEDERAL COMMUNICATIONS COMMISSION )  
(FCC) DOCKET 96-128 )

DOCKET NO.  
97-00409

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**ORDER OF PRE-HEARING OFFICER DENYING MOTION FOR INTERIM  
RELIEF, REQUESTING COMMENTS FROM PARTIES TO DOCKET  
NO. 97-00409 AND SETTING A PROCEDURAL SCHEDULE**

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This matter came before the Pre-Hearing Officer at a properly noticed Pre-Hearing Conference on July 11, 2000.

**Background**

Pursuant to Section 276 of the Telecommunications Act of 1996, the FCC issued orders for the implementation of payphone reclassification and compensation in its Docket No. 96-128. These FCC orders mandated state commissions to enforce new rules, which, among other things, require telephone companies to file tariffs with state commissions that reclassify their payphones and remove the subsidies to payphone operations from other classes of services. The FCC also ordered that the revised rates be implemented effective April 15, 1997. As a result, the following telephone companies filed tariffs with the Tennessee Regulatory Authority ("Authority"): BellSouth Telecommunications, Inc. ("BellSouth"); United Telephone Southeast, Inc. ("UTSE"); Citizens Telecommunications

**FAKED**  
**POSTED**  
7-21-00

Company of Tennessee and Citizens Telecommunications Company of the Volunteer State (collectively "Citizens"); Peoples Telephone Co.; West Tennessee Telephone Co.; Ooltewah/Collegedale Telephone Co.; Ardmore Telephone Co.; Crocket Telephone Co.; Claiborne Telephone Co.; Adamsville Telephone Co.; Millington Telephone Co.; and the Telephone Data System ("TDS") Companies, which include Tennessee Telephone Co., Humphreys County Telephone Co., Concord Telephone Exchange, Inc., and Tellico Telephone Co.

The Consumers Advocate Division of the Office of the Attorney General ("Consumer Advocate"), Tennessee Payphone Owners Association ("TPOA"), AT&T Communications of the South Central States, Inc. ("AT&T"), and MCI WorldCom ("MCI") requested that the Authority convene a contested case proceeding to determine whether the proposed tariffs comply with the FCC orders. Thereafter, the Authority established Docket No. 97-00409 and appointed Director H. Lynn Greer, Jr. as the Pre-Hearing Officer.

At a Pre-Hearing Conference held on May 29, 1997, the Consumer Advocate requested the Authority bifurcate Docket No. 97-00409 to allow the current docket to proceed with BellSouth, UTSE, and Citizens and to open another docket to consider the reclassification of payphones by the remaining, smaller independent local exchange carriers ("independent LECs"). The Pre-Hearing Officer, having examined the record, agreed to the Consumer Advocate's request and ordered the opening of Docket No. 97-01181 to address independent LECs' rates.

On September 3, 1997, the Pre-Hearing Officer held a status conference to determine the outstanding issues in Docket No. 97-00409. The following issues emerged:

1) the calculation of subsidies to or from payphone operations; 2) the appropriate rate changes to remove any determined subsidies; and 3) the appropriate access line rates for payphones. The Pre-Hearing Officer held another status conference on September 23, 1997 to determine whether the parties had settled any issues and to set a procedural schedule for the completion of the docket.

On March 4, 1998, the TPOA filed a motion to continue on behalf of all the parties in the proceeding. The TPOA argued that the Authority should continue this docket until it completes Docket No. 97-01262 ("Permanent Price Docket") and Docket No. 97-00888 ("Universal Service Docket") because both of these dockets involve the determination of the costs of various BellSouth services, including the costs of facilities used to serve pay telephones. The Pre-Hearing Officer agreed that the resolution of these dockets would influence the outcome of the current docket and, therefore, granted the continuance.

Docket No. 97-00409 remained inactive for over two years until March 21, 2000, when the TPOA requested that the Authority reconvene the proceedings and fix a tentative schedule for the final resolution of the outstanding issues. The TPOA gave three reasons to reconvene: 1) Docket 97-01262 appears to be reaching a conclusion; 2) the FCC recently released a decision that clarifies Section 276 guidelines for determining access rates for pay telephone lines; and 3) virtually all TPOA members are small firms who have suffered financial hardship because of the unexpected delay in this proceeding. BellSouth submitted a letter on March 31, 2000 agreeing that the proceeding should be reconvened, but disagreed with the TPOA's characterization of the FCC order.

In a letter dated April 27, 2000, the TPOA requested that the Pre-Hearing Officer ask all local exchange carriers ("LECs") to participate in the proceeding. The TPOA noted

that the Authority previously determined that it would address BellSouth's, Citizen's, and UTSE's payphone rates before setting the independent LECs' rates. The TPOA also suggested that the Authority adopt a procedure to determine cost-based rates for non-BellSouth carriers. TPOA suggested that non-BellSouth LECs should prepare and file cost studies for the determination of payphone rates. Those cost studies should be consistent with the methodology used by BellSouth and the adjustments ordered by the Authority in Docket No. 97-01262. In the alternative, the TPOA suggested that any LEC that elects to not file cost studies should be presumed to have the same costs as BellSouth for the limited purpose of fixing payphone rates. Under this procedure, BellSouth's rates would be proxy rates for the non-BellSouth LEC unless and until those companies filed cost studies.

In a letter dated May 12, 2000, UTSE and Citizens objected to the TPOA's requests and recommended maintaining the continuance in Docket No. 97-00409, because final orders have not issued in Docket Nos. 97-01262 or 97-00888. UTSE and Citizens also stated that because the Authority has accepted jurisdiction in these proceedings and because of the limited scope of the FCC order cited by the TPOA, the TPOA's reliance on the FCC order is misplaced. Additionally, UTSE and Citizens argued that Section 276 does not require the use of unbundled network element ("UNE") costs to establish cost-based pay telephone rates and that the FCC's order is flawed in requiring local exchange companies to set payphone rates at UNE-based rates. Thus, argued UTSE and Citizens, the Authority should not take action to set payphone rates until the FCC responds to petitions to reconsider the order relied upon by the TPOA.

UTSE and Citizens also disagreed with the TPOA's suggestion that they file cost studies in this proceeding. They contended there are other less onerous methods for

determining cost-based rates that still satisfy Section 276. They argued they are different companies with different costs than BellSouth and that they have previously filed and have in effect interim payphone rates. For these reasons, argued UTSE and Citizens, there is no reason to adopt another proxy rate for them, especially proxies that may not be appropriate given their differences from BellSouth.

On June 22, 2000, the TPOA filed a Motion for Interim Relief. In its motion, the TPOA stated that its members who operate payphones in the BellSouth region pay average rates of \$40 per payphone line. This rate includes line and usage charges as well as the end-user line charge ("EULC") and the preferred inter-exchange carrier charge ("PICC"). TPOA also claimed that based on a recent ruling from the FCC's Competitive Pricing Division, this figure exceeds the appropriate price. Based on its approximations, the TPOA proffered an average rate of \$18.90 per line as an appropriate interim rate. Attached to the TPOA's motion were affidavits from several payphone operators claiming to have suffered severe economic harm as a result of the unforeseen three-year delay in fixing pay telephone rates.

The Consumer Advocate, UTSE, and BellSouth filed comments to the Motion for Interim Relief on June 30, 2000. The Consumer Advocate supported a swift resolution to the payphone proceedings. Moreover, the Consumer Advocate supported interim relief for independent payphone providers. The Consumer Advocate claimed that the current delay is "destroying competition by adversely affecting the expenses and revenues of independent payphone providers."

In its response, UTSE stated that the TPOA's reasons for relief contain assertions that could impact UTSE if they are accepted as true and applied to UTSE as well as



BellSouth. UTSE noted the dramatic increase in independent payphone providers, despite the purported exorbitant rate. UTSE claimed the payphone providers' revenue decreases and other alleged economic harm stem from increased competition, increases in costs other than those in dispute, and their failure to collect dial around compensation from inter-exchange carriers. Lastly, UTSE opposed the TPOA's motion to the extent that it continues to seek the application of BellSouth UNE rates, costing methodologies, and/or prices derived from a proceeding containing no evidence of UTSE's costs, methodology, or prices. For these reasons, UTSE claimed the TPOA's basis for requesting interim relief is unfounded and asked that the TPOA motion be denied.

BellSouth's comments put forth many of the same arguments as UTSE. BellSouth noted that the FCC specifically rejected the Section 251 and 252 pricing regime for payphones. Instead, BellSouth claimed the FCC found that under Section 276 the Computer III tariff procedures and pricing, including the new services test, are more appropriate for basic payphone services provided by LECs to independent payphone providers. Thus, argued BellSouth, where an LEC has already filed intrastate tariffs for pay telephone access services, states may, after considering the requirements of the FCC orders and Section 276, conclude that the existing tariffed rates are appropriate and that in such case no further filings are required. Nonetheless, BellSouth stated that it does not oppose setting a procedural schedule in this matter.

The TPOA filed its reply on July 7, 2000. The TPOA reiterated its position that BellSouth's payphone rates are excessive. Further, argued the TPOA, a small reduction in the monthly charge will keep more payphones in operation. The TPOA stated that "[a]s a result of the unanticipated three-year delay in resolving this matter, many Tennessee

payphones have been taken from service.” The TPOA also argued that BellSouth failed to provide a legal justification for its argument that an evidentiary hearing is necessary. If there were such a legal reason, claimed the TPOA, BellSouth’s current rates, which have been accepted as “interim” rates by the parties and the TRA, would be illegal. If the TRA had the power to approve the current rates as interim rates, then it can approve modified interim rates whether or not the parties are in agreement.

**July 11, 2000, Pre-Hearing Conference**

The Pre-Hearing Officer held a Pre-Hearing Conference on July 11, 2000. The purpose of the conference was to address the Motion for Interim Relief and set a procedural schedule. The parties in attendance were:

BellSouth Telecommunications, Inc. – **Guy M. Hicks**, 333 Commerce Street, 22<sup>nd</sup> Floor, Nashville, TN 37201-3300 and **Langley Kitchings**, Esquire, 675 W. Peachtree Street, Suite 4300, Atlanta, GA 30375, who participated telephonically;

Citizens Telecommunications Company of Tennessee and Citizens Telecommunications Company of the Volunteer State – **John B. Adams**, Esquire, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900;

Consumer Advocate Division, Office of the Attorney General – **Vincent Williams**, Esquire and **Vance Broemel**, Esquire, 426 5th Avenue, N., 2nd Floor, Nashville, TN 37243;

Tennessee Payphone Operators Association – **Henry Walker**, Esquire, Boulton, Cummings, Conners & Berry, 414 Union St., #1600, P. O. Box 198062, Nashville, TN 37219-8062;

Telephone Data System Companies – **Dale Grimes**, Esquire, Bass, Berry & Sims PLC, 2700 First American Center, Nashville, TN 37238; and

United Telephone Southeast, Inc. – **James B. Wright**, Esquire, 14111 Capital Boulevard, Wake Forest, North Carolina 27587-5900.

During the conference, the Pre-Hearing Officer heard the parties’ oral arguments on the Motion for Interim Relief and comments on the request to reconvene the docket. In

addition, the Pre-Hearing Officer raised the issue of whether the parties to Docket No. 97-01181 should participate in this docket despite the previous order bifurcating Docket No. 97-00409. The Pre-Hearing Officer then asked the parties whether they could agree on a revised interim rate and heard comments on the issue. Thereafter, the Pre-Hearing Officer made the following findings:

1. The TPOA's proposed rate is not based on findings gathered during an evidentiary hearing and the issues involved with setting an interim rate are controversial.

2. The parties do not agree to the revised interim rate proposed by TPOA or any other revised interim rate.

3. There are no objections to reconvening Docket No. 97-00409.

4. The extended delay in concluding this proceeding was not expected at the time the docket was continued.

5. Further delay in setting cost-based pay telephone rates potentially harms competition in the pay telephone market.

6. The principal issue in this proceeding is determining the appropriate rate for pay telephone access lines.

7. The parties agreed to the following schedule for the resolution of this docket:

- Discovery requests must be filed with the Authority and served on all parties by **2:00 p.m., Tuesday, July 25, 2000.**
- Responses to Discovery must be filed with the Authority and served on all parties by **2:00 p.m., Tuesday, August 15, 2000.**
- Proposed payphone access line rates with detailed cost support shall be filed with the Authority and served on all parties no later than **2:00 p.m., Friday, September 15, 2000.**
- Pre-filed Direct Testimony shall be filed with the Authority and served on all parties no later than **2:00 p.m., Friday, September 15, 2000.**

- Discovery requests must be filed with the Authority and served on all parties by **2:00 p.m., Friday, September 22, 2000**. Such requests shall be limited to the information contained in the September 15, 2000 filings.
  - Responses to Discovery must be filed with the Authority and served on all parties by **2:00 p.m., Friday, September 29, 2000**.
  - Rebuttal to Pre-filed Direct Testimony shall be filed with the Authority and served on all parties no later than **2:00 p.m., Friday, October 6, 2000**.
  - Pre-Hearing Conference shall be held on **Tuesday, October 10, 2000**, immediately following the Authority's regularly scheduled Conference.
8. The Pre-Hearing Officer entered a Protective Order on June 6, 1997.

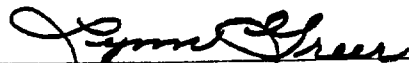
**IT IS THEREFORE ORDERED THAT:**

1. Docket No. 97-00409 is hereby reconvened.
2. The Motion for Interim Relief filed by the Tennessee Payphone Owners Association on June 22, 2000 is hereby denied.
3. The procedural schedule as agreed to by the parties and set out above is hereby adopted. The cost studies due on Friday, September 15, 2000 at 2:00 p.m. shall clearly describe and identify the cost methodology, cost model inputs, and all other supporting information necessary to develop a clear understanding of how the proposed rates are calculated. All Pre-filed testimony shall clearly reference the cost studies and supporting material where appropriate.
4. All parties in Docket No. 97-01181 are hereby requested to file comments on the options listed below for how to proceed with Docket No. 97-01181 by July 21, 2000 at 2:00 p.m.
  - A. Combine the proceedings and permit local exchange companies not under price regulation to file proposed rates in Docket No. 97-00409 pursuant to the above procedural schedule;

B. Maintain separate proceedings and permit the local exchange companies not under price regulation to file proposed rates in Docket No. 97-01181; or

C. Maintain separate proceedings and allow local exchange companies not under price regulation to intervene in Docket No. 97-00409 for the limited purpose of commenting on the proposed rates filed by the current parties to Docket No. 97-00409.

5. Pursuant to Tenn. Code Ann. § 4-5-317, any party may file a petition for reconsideration within fifteen (15) days of the entry of this order.



Director Lynn Greer  
Pre-Hearing Officer

ATTEST:



K. David Waddell, Executive Secretary

RECEIVED

JUL 31 2000

TN REGULATORY AUTHORITY  
GENERAL COUNSEL'S OFFICE

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

July 31, 2000

Exhibit 2

REC'D IN  
REGULATORY AUTH.

'00 JUL 31 PM 4 3

OFFICE OF THE  
EXECUTIVE SECRETARY

IN RE:

|   |   |            |
|---|---|------------|
| ALL TELEPHONE COMPANIES TARIFF          | ) | DOCKET NO. |
| FILINGS REGARDING RECLASSIFICATION      | ) | 97-00409   |
| OF PAY TELEPHONE SERVICE AS REQUIRED    | ) |            |
| BY FEDERAL COMMUNICATIONS COMMISSION    | ) |            |
| (FCC) DOCKET 96-128                     | ) |            |
| SMALL TELPHONE COMPANIES TARIFF         | ) | DOCKET NO. |
| FILINGS REGARDING RECLASSIFICATION      | ) | 97-01181   |
| OF PAY TELEPHONE SERVICE AS REQUIRED BY | ) |            |
| FEDERAL COMMUNICATIONS COMMISSION       | ) |            |
| (FCC) DOCKET 96-128                     | ) |            |

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**ORDER OF PRE-HEARING OFFICER CONTINUING SEPARATION OF THE  
DOCKET NO. 97-01181, GRANTING THE TENNESSEE SMALL LOCAL EXCHANGE  
COMPANIES COALITION'S PETITITON TO INTERVENE IN DOCKET NO. 97-00409**

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This matter came before the Pre-Hearing Officer upon the filing of comments by the Tennessee Payphone Owners Association ("TPOA"), Citizens Telecommunications of the Volunteer State ("Citizens-VS"), and the Tennessee Small Local Exchange Companies Coalition ("Coalition")<sup>1</sup> and the filing of a Petition to Intervene by the Coalition.

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<sup>1</sup> The Coalition consists of the following companies:

- 1) Ardmore Telephone Company, Inc.
- 2) Century Telephone Inc. Companies consisting of Century Telephone of Adamsville, Century Telephone of Claiborne, Inc., and Century Telephone of Ooltewah-Collegedale, Inc.
- 3) Loretto Telephone Company, Inc.
- 4) TDS TELECOM Companies ("TDS") in Tennessee consisting of Concord Telephone Exchange, Inc., Humphreys County Telephone Company, Tellico Telephone Company, and Tennessee Telephone Company
- 5) Telephone and Electronics Corp. Companies in Tennessee consisting of Crockett Telephone Company, Inc., Peoples Telephone Company, Inc., and West Tennessee Telephone Company, Inc.
- 6) United Telephone Company, Inc.

In an order filed on July 21, 2000 in Docket No. 97-00409, the Pre-Hearing Officer requested that all parties in Docket No. 97-01181 file comments on three options for proceeding with Docket Nos. 97-00409 and 97-01181. The three options were:

A. Combine the proceedings and permit local exchange companies not under price regulation to file proposed rates in Docket No. 97-00409 pursuant to the above procedural schedule;

B. Maintain separate proceedings and permit the local exchange companies not under price regulation to file proposed rates in Docket No. 97-01181; or

C. Maintain separate proceedings and allow local exchange companies not under price regulation to intervene in Docket No. 97-00409 for the limited purpose of commenting on the proposed rates filed by the current parties to Docket No. 97-00409.

The TPOA suggested that the Pre-Hearing Officer: 1) combine all local exchange company ("LEC") payphone filings into one docket; 2) require all incumbent LECs to file payphone access line rates with detailed cost support by September 15, 2000;<sup>2</sup> 3) continue with the procedural schedule set forth in the Pre-Hearing Officer's July 21, 2000 order and apply such schedule to BellSouth Telecommunications, Inc. ("BellSouth"), United Telephone Southeast, Inc. ("UTSE"); Citizens Telecommunications Company of Tennessee ("Citizens"), and TDS; and 4) allow any LEC to intervene and participate. Citizens-VS supported the first option of combining Docket Nos. 97-00409 and 97-01181 because of efficiency and administrative economy. The Coalition argued against combining the two dockets. The Coalition asserted that the cost of filing cost studies would be unduly burdensome. Further, the Coalition argued that nothing has changed since the Pre-Hearing Officer first separated the dockets in an order filed on June 6, 1997.

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<sup>2</sup> This deadline is in accordance with the procedural schedule set forth in the Pre-Hearing Officer's July 21, 2000 order in Docket No. 97-00409.

After thoroughly reviewing the parties' filings, the Pre-Hearing Officer concludes that option C is the best alternative for proceeding with Docket Nos. 97-00409 and 97-01181. Although the parties have put forth competent arguments in favor of combining the dockets, no party has provided the Pre-Hearing Officer with any compelling reason to overturn the June 6, 1997 order separating the dockets. Moreover, it is the opinion of the Pre-Hearing Officer that the parties to Docket No. 97-01181 should be spared the expense of preparing and producing cost studies for the sole purpose of establishing pay telephone rates.

After choosing option C, the Pre-Hearing Officer further concludes that the Petition to Intervene filed by the Coalition should be granted for the limited purpose of commenting on the proposed rates filed by the current parties to Docket No 97-00409. Moreover, because of the limited grant of intervention, those LECs that are parties to Docket No 97-01181 and that are granted limited intervention in Docket No. 97-00409 shall not be responsible for responding to discovery requests. Parties to Docket No. 97-00409 will have an opportunity for discovery at a later date in Docket No. 97-01181. Comments to the proposed rates shall be filed no later than 2:00 p.m. on Friday, October 6, 2000.

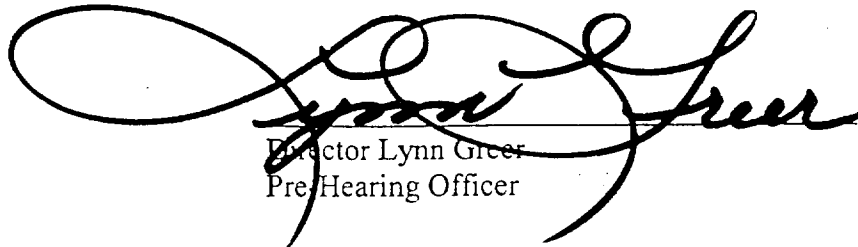
**IT IS THEREFORE ORDERED THAT:**

1. Docket Nos. 97-00409 and 97-01181 shall remain separate.
2. The Tennessee Small Local Exchange Companies Coalition's Petition to Intervene is granted for the limited purpose of commenting on the proposed rates filed by the current parties to Docket No. 97-00409. Comments on the proposed rates shall be filed no later than 2:00 p.m. on Friday October 6, 2000.
3. Parties to Docket No. 97-01811 that are granted permission to intervene on a limited basis shall not be required to respond to discovery requests.



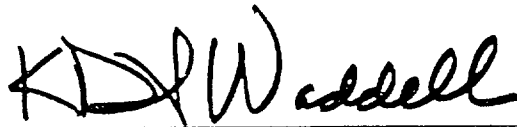
4. This Order will be considered at the Authority Conference scheduled for August 15, 2000 at 9:00 a.m.

5. Any party desiring to file comments or objections they should do so within ten (10) days from the date of this Order, or not later than 2:00 p.m. on Thursday, August 10, 2000.



Director Lynn Greer  
Pre-Hearing Officer

ATTEST:



K. David Waddell, Executive Secretary